IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE K.R.UDAYABHANU

THURSDAY, THE 25TH OCTOBER 2007 / 3RD KARTHIKA 1929

Crl.Rev.Pet.No. 176 of 2000()

CRA.1/1996 of ADDL.SESSIONS COURT, THALASSERY
CC.397/1990 of JUDL. MAGISTRATE OF FIRST CLASS COURT, THALASSERY

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REVN. PETITIONER:

M.A.SHAMSUDDIN,
S/O.ABDULLA,
KADIRUR AMSOM DESOM,
THALASSERY TALUK,
KANNUR DISTRICT.

BY ADV. SRI.K.V.SOHAN

RESPONDENTS:

SUB INSPECTOR OF POLICE,
THALASSERY, REPRESENTED BY ITS
PUBLIC PROSECUTOR,
HIGH COURT OF KERALA,
ERNAKULAM.

BY PUBLIC PROSECUTOR, SRI AMJAD ALI

THIS CRIMINAL REVISION PETITION HAVING BEEN FINALLY HEARD ON 25/10/2007, THE COURT ON THE SAME DAY PASSED THE FOLLOWING:

ORDER ON CRL.M.P.NO.1008/2000 IN CRL.R.P.NO.176/2000

DISMISSED.

SD/- K.R.UDAYABHANU, JUDGE

25/10/2007

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K.R.UDAYABHANU, J.

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Crl.R.P.No.176 of 2000-C

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Dated this the 25th day of October, 2007

O R D E R

The revision petitioner who is the accused in C.C.No.397/1990 in the file of the Judicial Magistrate of the First Class, Thalassery, stands convicted for the offence under Section 420 I.P.C and sentenced to undergo rigorous imprisonment for one year and to pay a fine of Rs.5,000/- and in default to undergo simple imprisoment for three months.

2. The prosecution case is that during the period from 16/01/1985 to 03/03/1985 the accused cheated CW.1, PWs.1 to 5 by dishonestly inducing them to deliver Rs.20,000/- each from CW.1, PWs.2, 3 and 4 and Rs.19,000/- from PW.1, Rs.7,000/- from PW.5, promising them to give Visa for employment in Saudi Arabia and on failure to provide the Visa issued Exts.P2(a), P2(b), P3 series, P4 series, P7 series, P8 series, P17(A) and P17(B) cheques representing that the above amounts will be repaid in two instalments and the cheques issued were dishonoured.

3. The evidence adduced in the matter consisted of the testimony of PWs.1 to 16, Exts.P1 to P31.

4. The fact that the cheques were dishonoured for want of funds in the account of the accused were proved by PWs.10 to 13 bank managers. Ext.P6 is the agreement dated 03/12/1987 executed by the accused undertaking to return the amounts in two instalments. It is mentioned in Ext.P6 that he had received the amounts on the promise that the above persons will be given Visas. The cheque numbers and dates of cheques are also mentioned in Ext.P6. PWs.1 to 5, five of the persons who have been allegedly cheated have testified as to the transactions. PWs.6, 7 and 8, the persons, who allegedly introduced some of the persons who have been allegedly cheated, have testified as to the transactions. The testimony of PWs.1 to 9 support the prosecution version.

5. The counsel for the revision petitioner has only raised the contention that the offence under Section 420 I.P.C will not be attracted with respect to the situation of the dishonour of post dated cheques and that only civil liability can be fastened on the accused. The contention was considered by both the courts below and rejected.

It is particularly stressed by the lower appellate court that the prosecution is not relying on the dishonour of the cheques alone to contend that appellant/accused had committed the offence of cheating. Evidently, it is on the representation of the accused that he shall arrange Visa to Saudi Arabia that the amounts were paid to him and that he renewed his promise on various occasions and, it was subsequently that the cheques were given towards the amounts paid by the persons and the same when presented got dishonoured. In the circumstances I find that there is no merit on the contention of the counsel for the revision petitioner.

6. The counsel for the revision petitioner has relied on the decision of **Muraleedharan v.Vijayakumar [2006(4) KLT 342]**, wherein this Court has stressed that in order to constitute an offence under Section 420 I.P.C there must be some inducement by accused to complainant at initial stage and that in the above case at the time of the money transaction there was only a promise that the amount would be paid within two months. In the above case, I find that the facts are not in pari materia, and that the same was with respect to a loan transaction. In the above circumstances the conviction is confirmed.

7. The counsel for the revision petitioner has pleaded for leniency pointing out that since the date of the incident, about 19 years have lapsed and so far he was facing the ordeal of criminal proceedings. In the circumstances I find that the sentence is liable to be modified to imprisonment till the rising of the court and to pay a compensation of rupees twenty-three thousand to PWs.2,3 & 4 and CW.1; and a sum of rupees twenty-two thousand to PW.1 and; rupees ten thousand to PW.5; and in default to undergo simple imprisonment for six months each. The revision petitioner is granted six months time to remit the amount of compensation. He shall appear before the Judicial Magistrate of the First Class, Thalassery, on 25/04/2008 to receive the sentence. The criminal revision petition is disposed of as above.

K.R.UDAYABHANU,
Judge

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K.R.UDAYABHANU, J.

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Crl.R.P.No.176 of 2000-C

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O R D E R

25th October, 2007